IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7891 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HITESH JIRAVALA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7891 of 2003

MR GM JOSHI for Petitioner No. 1-20

GOVERNMENT PLEADER for Respondent No. 1-2

MR AR THACKER for Respondent No. 3

MR MITUL K SHELAT for Respondent No. 4-5

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 10/09/2003

C.A.V. JUDGEMENT

The short facts of the case are that the petitioners are claiming to have admission in All India quota for the study course of Postgraduate in medical

faculty. It is the case of the petitioners that they have passed the MBBS examination and in All India quota for the year 2003 there were 30 seats out of which 16 seats were filled up and 17 seats remain vacant. Therefore, the petitioners' case is that these 17 seats could be made available to the students of general category. It is the further case of the petitioner that out of 17 seats 5 admissions were given to the students of Saurashtra University but the admissions are not given for 12 seats and therefore the petitioners are claiming that they should be granted admission or they should be considered for the said vacant 12 seats of All India quota.

2. Pending admission the petitioners have placed on record the draft amendment challenging the admission granted to Dr.Harsha Machhi and Dr.Kamini Modi on 23.4.03 and have prayed for directing the respondents to start admission process afresh for these two seats.

3. The case of the University and the college authorities is that the academic year would be 2003 and therefore initially for five seats the eligible students are considered for admission for All India quota and 12 seats will be considered in the year but for the batch of July, 2003.

Rule 4(1) & (2) of Saurashtra University Rules for Admission to Postgraduate centre for the faculty of Medicine reads as under:

"4. Availability of P.G.Admissions:

(1) The annual P.G.Admission will be decided on the basis of total number of P.G.teacher/Asst.to P.G.Teachers available in the month of October/November of the preceding year, taking into account the actual number of P.G.teachers as on date of personal interview of the November term.

(2) Approximately, 75% of the P.G.Admission in each subject will be available for November term and the remaining 25% admission for the term starting from next June."

It is the case of the university that in place of word "October" and "November" they are substituted as "January" and "July". It is the further case of the University and the college authorities that as per Rule 4(2) 75% of P.G.Admissions in each subject will be held in July and 25% will be in January. Therefore since 17 seats had remained vacant 25% of those vacant seats,

roughly 5 seats, were allocated to the batch of January, 2003 and 75%, roughly 12 seats, were allocated to the batch of July, 2003. It has been submitted that therefore the petitioners can not assert as a right for allocating seats of all India quota which remained vacant to the batch of January, 2003 only. It is also the case of the University and the college authorities that the students some of whom are petitioners have been granted admission in PG course in different branches and the present petitioners by this petition are interested to leave the seat of the branch in which they have got admission in PG course and are interested to get admission in the branch of PG degree of their choice.

4. It has been submitted on behalf of the petitioners that such a change from one branch to another branch is permissible and as such the respondent Nos 4 and 5 are also granted such change in the branch. Therefore, the contention of the petitioners is that if a change or jumping in branch is not to be permitted, then the admission granted to respondent Nos 4 and 5 also will have to be cancelled. Mr.Joshi, Ld.counsel, during the course of hearing also submitted that so far as the Saurashtra University is concerned, such change of branch is not permitted. He relied upon the decision of of the Division Bench of this court in the case of Bindy Nair and others V/s M.P.Shah Medical College & Ors reported in 2000(1) G.L.H.417 for contending that such change of seat or branch is not permitted even by the Division Bench of this court. Mr.Joshi also relied upon the judgment of this court in the case of Patel Prakash Prahladbhai & Ors V/S Govt Medical College, Surat & Ors reported in 2003(2) GCD 1211(Guj) whereby such rule permitting jumping from one branch to another branch during the period of study of Postgraduate degree in medical faculty is struck down by this court and therefore it has been submitted that either vacant seats could be made available to the petitioners irrespective of the fact that whether the petitioners are granted admission in different branch or not or in the alternative the admission granted to respondent Nos 4 & 5 whereby the change of seat is permitted by the University should be quashed.

4A) Rule 4(4) of Saurashtra University Rules for Admission to Postgraduate centre for the faculty of Medicine reads as under:

"(4) Those students registered for the diploma course in the Medical faculty , if get admission in the P.G.degree courses in the same subject be considered eligible for admission with the benefit of maximum Two Terms, Novertheless, such

a change be made available for the period of two such opportunities soon after the admission in the courses."

Ld.Advocate Mr.Nanavaty appearing with Mr.Thakkar interalia submitted that as per the aforesaid Rule 4(4) the change is permissible and it was granted to respondent Nos 4 and 5. However, he submitted that when the aforesaid admission came to be granted to respondent Nos.4 & 5 the petitioners have also participated in the said admission procedure as back as on 28.3.03 and not only that but some of the petitioners have also got admission during the said process of granting admission. Mr.Nanavaty submitted that the petitioners did not challenge the above relevant point of time. However, subsequently since the petitioners did not get admission and when the next batch was to start in the month of June-July 2003 the grievance is made. Mr.Shelat appearing for respondent Nos 4 & 5 submitted interalia there is conscious waiver on the part of petitioners when the petition was preferred and petitioners were fully aware that the admissions are granted to respondent Nos 4 & 5 . However, at the relevant point of time the petitioners chose not to challenge the same and respondent Nos 4 & 5 have undergone studies and are prosecuting their studies and therefore even if this court is to hold now that the jumping is not permissible, then also it can not be said that in view of Rule 4(4) the admissions granted to respondent Nos 4 & 5 were illegal at the relevant point of time. Therefore, Mr.Shelat submitted that in any case the admissions which are already granted to respondent Nos 4 & 5 who are prosecuting their studies may not be quashed.

5. Before I proceed to examine the further aspects of the case, it is pertinent to note that the Rule 4(4) referred to hereinabove itself provides for jumping or change of seat after getting admission in one branch of P.G.degree. Such rule was in existence in the Govt.Medical College, Surat. This court had an occasion to consider the identical issue in case of Patel Prakash Prahladbhai (supra) and after considering the judgment of the Division Bench of this court in case of Bindy Nair & Ors (supra) in LPA No.912/99 (2000(1) GLH P.417) at para 14 observed as under:

"It apears that if such a Rule is allowed to operate, the consequences would be that Post Graduate seat for which Government is equally contributing huge amount would lapse. The second consequence would be that the aspirant candidates after completing the course in MBBS desirous to

join the Post Graduate course will loose the opportunity for all time to come qua the seat which has lapsed. Further, in the midst of study or after undergoing study for about two years if the change of branch is permitted, the period for which the candidate has studied would not only go in vain and would stand wasted but the period for which the contribution of public money would also go away and would stand wasted. The availability of the said seat for the remaining period would also go away as a result thereof and the study in the educational field will not be able to achieve its object and purpose in the maximum possible manner. It can not be ignored that for imparting education in medical branch and more particularly in Post Graduaate Branch Government is contributing huge amount of money and is one of the vital field of education of the society too. Therefore, I am of the view that Rule 8 is arbitrary and unreasonable on the face of it inasmuch as no useful purpose would be served by allowing such a Rule to operate and thereby to allow the student concerned to change in the Post Graduate Branch of medicine and thereby allowing the seats to be lapsed and foreclosing the opportunities of aspiring students. In my view, striking down of the Rule would rather be in the public interest and on the contrary if such Rule is allowed to operate, it would defeat the public interest inasmuch as it would result into foreclosing the opportunities of the aspiring eligible students for Post Graduate studies in medicine. It would also result into wastage of public money and time and as a consequence thereof it would also result into depriving the society the services of Post Graduate Doctors which is rather a basic and fundamental need of the society in any atmosphere. The only basis for making such rule appears to be to enable the student concerned to get the degree of Post Graduate. Such basis can not be said to be rational and it would be rather irrational if the seat is allowed to lapse and public money is allowed to be wasted and opportunities of other Doctors holding degree of MBBS are foreclosed."

Therefore, on the basis of same reasons in my view the Rule 4(4) which is pressed in service by Mr.Nanavaty deserves to be struck down because if such rule is allowed to be operated it would defeat the public interest in as much as it will result into foreclosing opportunities of large number of aspirant and eligible

students for Postgraduate degree in Medical faculty and it would also result into wastage of public money and time and as a consequence thereof it would also result into depriving the society the services of Postgraduate Doctors which is rather a fundamental and basic need of the society in any atmosphere. There is no rational basis for such rule and it would be rather irrational if the seats are allowed to lapse and the public money is allowed to be wasted and opportunities of other doctors holding degree of MBBS are foreclosed. Therefore, in my view Rule 4(4) deserves to be declared ultravires, unconstitutional and violative of Article 14 of the Constitution of India.

6. Mr.Nanavaty made an attempt to submit that strictly speaking if the Rule 4(4) is allowed to operate, it can not be said that it would result into allowing jumping because he submitted that what is permitted by Rule 4(4) is change of course in the same subject from diploma to degree. In my view, the consequences would be even in such a situation the same as it happened in case while considering the matter for examining the validity of Rule 8 of P.G.degree examination of South Gujarat University in case of Patel Prakashbhai Prahladbhai (supra) because in any case if such rule is allowed to operate it would result into wastage of studies already undergone and the seat which was occupied, may be for diploma, would lapse. Therefore, such contention of Mr.Nanavaty can not be accepted.

7. However, since such declaration is being made today, the admissions already granted by the university or the college authorities on the basis of Rule 4(4) should not be disturbed because in any event the students who opted for admission at the relevant point of time when the rule operated can not be made to suffer. It can be said that the respondent Nos 4 & 5 at the relevant point of time bonafide applied for admission and such change was permitted by the university since the rule was in force at the relevant point of time. Therefore, considering the facts and circumstances of the case, I find that the admission granted to respondent Nos 4 & 5 should not be disturbed.

8. There is one additional reason for not to disturb the admission already granted to the students during the period when the Rule 4(4) operated and the same being that the right of the students who have been granted admission can be said to have been crystalised and the petitioners though were fully aware that the admissions are granted to respondent Nos 4 & 5 did not challenge the

same. Therefore, qua the respondent Nos 4 & 5 the petitioners can not validly invoke the equitable jurisdiction of this court and the delay caused by the petitioners in challenging the decision of the authorities of granting admission to respondent Nos 4 & 5 would disentitle the petitioners to invoke eauitable jurisdiction of this court under Article 226 of the Constitution of India or in any case the relief for the same.

9. The aforesaid takes me to examine the first contention raised by the petitioners for making the seats of all India quota available to the petitioners. In this regard it may be stated that pending the petition when the admission process was to be finalised further for the batch of July 2003 this court on 4.8.03 had passed the order that by virtue of Rule 4(4) no student shall be allowed to change the course from diploma to degree or from one degree to another degree or one postgraduate course to another postgraduate course and except the said clarification the admission process was not disturbed. Subsequently, Mr.Nanavaty has declared that no student is allowed to change the course in view of the order passed by this court on 4.8.03. Further Mr.Thakkar for Mr.Nanavaty appearing for the university has also declared that out of 20 petitioners 18 petitioners have got admission in postgraduate course and only two petitioners, namely, petitioner No 2 & 20 are concerned, petitioner No.20 was called for interview in the admission process of July 2003 batch but since he was not getting the branch of his choice he has chosen not to take admission and the petitioner No.2 has not at all applied for admission. Therefore, it appears that now even if the question is considered for allotment of all India quota of 12 seats, the consequent effect would be to allow the students to change the course from one branch to another by leaving the course in which they are admitted and it may also result into allowing the seats to be lapsed if the petitioners are also granted admission. If such situation is allowed to operate or to be created it would result into wasting the period for which the concerned student has studied and would also result into wastage of contribution of public money made by the Government for making the seats available to the students for the said branch or course. If the change is permitted the availability of such seats for admission to the remaining period would also go away and as a result the State in its educational field will not be able to achieve its object and the purpose in the maximum possible manner. As observed by this court in the case of Patel Prakash Prahladbhai (supra), in the medical

branch and more particularly of postgraduate course the Govt is contributing huge amount and such would also result into wastage of public money if the students are allowed to leave the said course in its midst and permitted to join the studies in different branch. Further, it is not the case of the university that the left out seats of all India quota are not made available to the students of general category. However, the case of the university is that the left out 12 seats are made available to the next batch of July, 2003 and such is permitted as per Rules. In my view, if the university has permitted such practice of allotment of seats by separate batch, it can not be said that such policy of the University or Rules providing for such allotment of seats are unreasonable or arbitrary. Not only that, but since the admissions are already granted for those 12 seats of all India quota to students, such aspect in reality has become infructuous . In view of aforesaid circumstances, I find that direction can not be issued to the respondent-university and the college authorities to make 12 seats available to the petitioners and other eligible students for admission to P.G.course.

10. In view of the aforesaid observations and discussion, the petition is partly allowed to the extent that the Rule 4(4) of the Saurashtra University which is referred to hereinabove is declared ultravires, unconstitutional and violative of Article 14 of the Constitution of India. The petition shall stand rejected qua the relief prayed for allotment of 12 seats of all India quota to the petitioners and other students and shall also stand rejected qua the prayer for cancellation of admission granted to respondent Nos 4 & 5. Rule made absolute partly to the aforesaid extent. Considering the facts and circumstances of the case,there shall no costs.

10.9.03 (JAYANT PATEL,J)